

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

Defendants.

NO. 2:20-cv-01105

DECLARATION OF
BILL MOSS

I, Bill Moss, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18, have personal knowledge of the facts and circumstances in this Declaration, and competent testify in this matter.

2. I am the Assistant Secretary to the State of Washington, Department of Social and Health Services (DSHS), Aging and Long-Term Support Administration (AL TSA). I was appointed the Assistant Secretary of AL TSA in February 2013 and serve at the pleasure of Governor Jay Inslee. The Assistant Secretary is a member of the Department's Secretary

1 Cabinet. My duties as the Assistant Secretary of ALTSA include supervising the ALTSA
2 divisions and administering state programs for long-term support services that provide care
3 for our state's aging population and adults with disabilities.

4 3. Over the past two decades, I have served in a number of positions within
5 DSHS and ALTSA, including Director of the Home Community Services Division, Office
6 Chief for Home and Community Programs, and Assistant Regional Administrator for Home
7 and Community Services. In 2017, Governor Jay Inslee appointed me interim Acting
8 Secretary for DSHS.

9 4. I participate in a number of state and national boards and workgroups,
10 including the Training Partnership, which delivers innovative training for long-term care
11 workers in Washington; as Vice Chair for the Health Benefits Trust Board, which provides
12 advisory oversight of affordable benefits for long-term care workers; as Chair of the State of
13 Washington's Dementia Action Collaborative Working Group; Health Care Apprenticeship
14 Program Board (HCAP); and as a previous board member on the National Association of
15 State Units on Aging and Disabilities (NASUAD) (Region X Regional Representative).

16 5. ALTSA is comprised of the Office of the Assistant Secretary, the Office of
17 Communication, Government and External Relations, the Office of Deaf and Hard of Hearing,
18 Residential Care Services Division, Management Services Division, Home and Community
19 Services Division, and the Adult Protective Services Division. More than 2,450 staff work for
20 the administration at the state headquarters in Olympia and in regional offices throughout the
21 state. ALTSA also contracts with the thirteen Area Agencies on Aging that provide in-home
22 services to individuals sixty years of age and older and clients with disabilities that meet the
23 nursing facility level of care criteria.

24 6. ALTSA's mission is to transform lives by promoting choice, independence,
25 and safety through innovative services. ALTSA's vision is to support seniors and people with
26 disabilities to live with good health, independence, dignity, and to have control over the

1 decisions that affect their lives. Our core values include: collaboration, respect,
 2 accountability, compassion, honesty, integrity, pursuit of excellence, open communication,
 3 diversity and inclusion, and commitment to service.

4 7. AL TSA provides critical home- and community-based services to over
 5 100,000 Washingtonians. The majority of AL TSA's home and community-based services are
 6 funded partially or entirely by HHS, including Medicaid State Plan and Medicaid Waiver
 7 Services, and the Older Americans Act. The range of residential care options funded at least in
 8 part by HHS includes nursing homes, which provide 24-hour supervised nursing care, personal
 9 care, therapy, nutrition management, organized activities, social services, room, board and
 10 laundry, assisted living facilities, and adult family homes. Services also include in-home
 11 personal and nursing care and adult day care, which is a supervised nonresidential program
 12 that includes services appropriate for adults with medical or disabling conditions. Individuals
 13 may receive assistance with personal care, counseling, general therapeutic and recreational
 14 activities, general health monitoring, and nutritious meals.

15 8. Services that may be offered in the above settings or in the community include
 16 information and assistance, environmental modifications, nutrition services, legal services,
 17 family caregiver supports, wellness/prevention, specialized medical equipment and supplies,
 18 community choice guides, supported employment, supported housing, elder abuse prevention,
 19 and long-term care services.

20 9. I am familiar with the rule of the Department of Health and Human Services
 21 entitled "Nondiscrimination in Health and Health Education Programs or Activities,
 22 Delegation of Authority," 85 Fed. Reg. 37160-248 (the "Final Rule"), which was published in
 23 the Federal Register on June 19, 2020.

24 10. I understand that the Final Rule, among other provisions, removes
 25 antidiscrimination protections in health care and health insurance for LGBTQ people and
 26 women who have terminated a pregnancy. I also understand that the Final Rule limits the

1 number and type of health care entities that must comply with the anti-discrimination
2 provisions of the Patient Protection and Affordable Care Act (“ACA”), and no longer requires
3 notices and taglines to be provided to individuals with Limited English Proficiency (LEP).

4 11. The Final Rule directly conflicts with Washington state law and DSHS policy
5 which prohibit discrimination on the basis of sexual orientation and gender identity. DSHS
6 Administrative Policy 7.22 requires respect for everyone with whom we interact regardless of
7 difference.

8 12. The Final Rule will impact DSHS’s ability to dependably provide required
9 medical services. Members of our team at ALTSA are dedicated to helping clients find
10 suitable providers. The process is challenging and requires careful coordination of what
11 environment will best suit the client, availability, proximity to their home community, and
12 services needed. The expanded ability for providers to deny services for certain healthcare
13 coverage plans to deny coverage and discriminate against individuals adds an additional
14 element of complexity to this process. ALTSA will have to spend additional time and
15 resources in the effort to comply with Washington law and offer individuals options with
16 service providers who do not discriminate. This will also likely slow down the process of
17 matching individuals with services and prevent them from receiving care in a timely manner.
18 It may also limit clients’ choice of services and providers and could result in some individuals
19 unnecessarily residing in institutional settings rather than being served in home and
20 community-based settings.

21 13. Those who identify as LGBTQ are at a higher risk for discrimination,
22 prejudice, denial of civil and human rights, harassment, and family rejection anyway. The
23 Final Rule puts this vulnerable population at even higher risk. People who are LGBTQ may
24 feel unsafe asking for support or be outright denied the assistance and compassion they
25 deserve, simply because of who they are. The Final Rule will have dire consequences for the
26 LGBTQ community in Washington, particularly as they reach an age where they will need

1 supportive aging services. In addition, permitting more discrimination against the LGBTQ
 2 means those individuals will have more negative health outcomes over the course of their
 3 lives and require more services at a greater cost for DSHS-ALTSA when they become our
 4 clients.

5 14. Additionally, the Final Rule expands the ability of providers to refuse to
 6 provide services by reason of a conscience objection, as a result, adds to the administrative
 7 burden DSHS-ALTSA will have to deal with in trying to find providers who will provide
 8 services.

9 15. The Final Rule also provides that notices and taglines concerning the
 10 availability of language access services and non-discrimination in healthcare will no longer be
 11 sent to LEP individuals. This will result in those individuals not having full information about
 12 their health needs, and will result in poorer health outcomes and greater expense for DSHS-
 13 ALTSA once those individuals become clients.

14 16. All of these barriers to healthcare for LGBTQ individuals and LEP individuals
 15 increase the risk of abuse and neglect of the older Washingtonians we work to serve.

16 17. Also, the Final Rule change, if allowed to take effect, will require DSHS-
 17 ALTSA to expend significant resources to revise and make changes to numerous materials,
 18 including:

- 19 a. Changes to websites, policies, and applications for employees, subcontractors,
 20 and funding recipients, where non-discrimination notices required by the
 21 previous version of the Final Rule exist;
- 22 b. Changes to Management Bulletins to Area Agencies on Aging;
- 23 c. Changes to Notices to Individual Providers;
- 24 d. Revision and sending Provider Letters to all licensed and certified Community
 25 Residential Providers;
- 26 e. Revision of notices to employees;

1 f. Revision of training programs and modules for employees, subcontractors, and
2 funding recipients;

3 g. Additional costs to print and distribute new posters and brochures to external
4 subcontractors and funding recipients and to employees that inform them of
5 changes to the Rule.

6 18. DSHS-ALTSA estimates the costs it will incur to make the above-mentioned
7 changes to materials to be at least \$78,168.16. DSHS-ALTSA likewise estimates substantial
8 additional costs in the future associated with administrative burdens of finding providers who
9 will not discriminate against ALTSA clients, and increased administrative burdens for
10 providing services and support to ALTSA clients who are in poorer health as a result of
11 discrimination and lack of access that they would not suffer in the absence of the Final Rule.

12 19. It is the right of all Washingtonians to receive care free from discrimination.
13 We are committed to providing quality care to all individuals and we work diligently to help
14 reduce health disparities across the state. The Final Rule jeopardizes our ability to meet the
15 various needs of our communities.

16 I declare under penalty of perjury under the laws of the United States and the State of
17 Washington that the foregoing is true and accurate.

18 DATED this 14 day of July, 2020, in Olympia, Washington.

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21 BILL MOSS
22 Dept. of Social & Health Services
23 Aging and Long-Term Services Admin.
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